

**REMARKS/ARGUMENTS**

This Amendment is being filed in response to the Final Office Action dated September 28, 2009. Reconsideration and allowance of the application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 1, 3-9 and 11-19 are pending in the Application.

In the Final Office Action, claims 5 and 11 are objected to for informalities. This objection to the claims is respectfully traversed. However, without agreeing with the Examiner, and in the interest of advancing consideration and allowance of the claims, the claims are amended as suggested by the Examiner. It is respectfully submitted that the informalities raised by the Examiner are addressed by the amendments to the claims and as such, withdrawal of the objection to claims 5 and 11 is respectfully requested.

Claims 7, 8, 16 and 19 are rejected under 35 U.S.C. §112, second paragraph, as allegedly indefinite. This rejection to the claims is respectfully traversed. However, without agreeing with the Examiner, and in the interest of advancing consideration and allowance of the claims, the claims are amended as suggested in the

Final Office Action. It is respectfully submitted that the rejection of claims 7, 8, 16 and 19 is overcome and an indication of the withdrawal of the rejection of claims 7, 8, 16 and 19 under 35 U.S.C. §112, second paragraph, is respectfully requested.

In the Final Office Action, claims 1, 3, 4, 6, 9, 15 and 18 are rejected under 35 U.S.C. §102(e) over U.S. Patent Publication No. 2005/0126007 to Aviza ("Aviza"). Claims 5, 7, 8, 11-14, 16, 17 and 19 are rejected under 35 U.S.C. §103(a) over Aviza. The rejection of claims 1, 3-9 and 11-19 is respectfully traversed. It is respectfully submitted that claims 1, 3-9 and 11-19 are allowable over Aviza for at least the following reasons.

The Final Office Action has interpreted the screw threads of the thumb wheel 184 shown in FIGs. 9A-9B as corresponding to the "two mutually opposing inclined surfaces" recited in the present claims. The claims are amended herein to clarify that it is "a lateral displacement of a first one of the two mutually opposing inclined surfaces in a direction parallel to said plane" that "moves a second one of the two mutually opposing inclined surfaces in the direction perpendicular to said plane." Clearly, the thumb wheel of Aviza is not displaced laterally and as such, is unrelated to the claims as presented.

It is respectfully submitted that the razor apparatus of claim 1 is not anticipated or made obvious by the teachings of Aviza. For example, Aviza does not teach, disclose or suggest, a razor apparatus that amongst other patentable elements, comprises (illustrative emphasis added) "wherein the adjustable guiding member comprises two mutually opposing inclined surfaces, and wherein a lateral displacement of a first one of the two mutually opposing inclined surfaces in a direction parallel to said plane moves a second one of the two mutually opposing inclined surfaces in the direction perpendicular to said plane" as recited in claim 1, and as similarly recited in claim 9 and 13. In Aviza, it is clear that the embodiment showing the thumb wheel pivots along a pivot axis and is not displaced laterally to produce motion in a direction perpendicular to the plane.

Based on the foregoing, the Applicants respectfully submit that independent claims 1, 9 and 13 are patentable over Aviza and notice to this effect is earnestly solicited. Claims 2-8, 11-12 and 14-19 respectively depend from one of claims 1 and 9 and accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of the claims.

For example while the Final Office Action admits with regards

to claims 5, 11 and 12 that Aviza fails to teach, disclose or suggest "the adjustable guiding member being adjustable in the claimed manner including above the plane", yet the Final Office Action concludes that "[h]owever, it is old and well known in the art to provide such an adjustment range of such an adjustable member for various well known benefits including obtaining desired shaving characteristics."

Similarly, the Final Office Action admits with regards to claims 7, 8, 16 and 19 that Aviza fails to teach, disclose or suggest the "spring configuration" of the claims, yet again concludes that "such spring configurations are old and well known in the art and are particularly useful on open inclined surfaces."

Still further, the Final Office Action admits with regards to claims 13, 14 and 17 that Aviza fails to teach, disclose or suggest the "the adjustable guiding member is positioned to contact a portion of skin after the one or more blades", yet once again concludes that "it is old and well known in the art to provide such lubricating (such as component 24 of Aviza) behind of the blade(s) for various well known benefits including obtaining desired shaving characteristics" or in the alternative concludes that "if it is argued that Aviza lacks an explicit disclosure that the other guiding member is a skin stretching member, it is old and well

known in the art to provide such skin stretching members in front of the blade(s) for various well known benefits including obtaining desired shaving characteristics."

It is respectfully submitted that these numerous cases of stating what is alleged to be "well known" deprives the Applicants an opportunity to examine specific references and respond accordingly.

The MPEP in §2144.03 in a section titled "Reliance on Common Knowledge in the Art or 'Well Known' Prior Art" makes clear that only in limited circumstances is it appropriate for an examiner to take official notice of facts not in the record or to rely on "common knowledge" in making a rejection and that such rejections should be judiciously applied. MPEP in §2144.03(A) is entitled "Determine When It Is Appropriate To Take Official Notice Without Documentary Evidence To Support The Examiner's Conclusion". Therein it states that (emphasis provided) "Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "official notice" may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or

to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)) ... Furthermore, it might not be unreasonable for the examiner in a first Office action to take official notice of facts by asserting that certain limitations in a dependent claim are old and well known expedients in the art without the support of documentary evidence provided the facts so noticed are of notorious character and serve only to "fill in the gaps" which might exist in the evidentiary showing made by the examiner to support a particular ground of rejection. *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001); *Ahlert*, 424 F.2d at 1092, 165 USPQ at 421.

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by

citation to some reference work recognized as standard in the pertinent art. In re Ahlert, 424 F.2d at 1091, 165 USPQ at 420-21 ... In re Eynde, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) ("[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice.").

It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. Zurko, 258 F.3d at 1385, 59 USPQ2d at 1697 ...

As the court held in Zurko, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. Id. at 1385, 59 USPQ2d at 1697. See also In re Lee, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002) ... "The board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies."

Accordingly, the Applicants respectfully traverse the Final Office Actions position on what is "well known" in the art. (For

example, see, Final Office Action, pages 7-8, 9 and 10.)

It is respectfully requested that the Examiner produce such references so that the Applicants may review and refute this assertion.

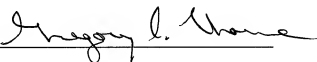
Accordingly, separate consideration of each of the dependent claims is respectfully requested.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response including any positions taken on what is alleged to be "well know." Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.



Applicants have made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

By 

Gregory L. Thorne, Reg. 39,398  
Attorney for Applicant(s)  
December 9, 2009

**THORNE & HALAJIAN, LLP**  
Applied Technology Center  
111 West Main Street  
Bay Shore, NY 11706  
Tel: (631) 665-5139  
Fax: (631) 665-5101